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A SERMON

PREACHED

AT THE ASSIZES

HELD AT THE

CITY OF CARLISLE,

AUGUST, XX, MDCCLXXV.

BEFORE

THE HONOURABLE SIR HENRY GOULD, Knight,

ONE OF THE JUSTICES OF HIS MAJESTY'S
COURT OF COMMON PLEAS,

AND

THE HON. SIR WILLIAM HENRY ASHURST, Knight,

ONE OF THE JUSTICES OF HIS MAJESTY'S
COURT OF KING'S BENCH.

By THOMAS SPEDDING, M. A.

PUBLISHED AT THE REQUEST OF THE HIGH SHERIFF
AND OF THE GENTLEMEN OF THE GRAND JURY.

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MDCCLXXVI.

BRITISH MUSEUM

TO

ANTHONY BENN, Esq.

HIGH SHERIFF of the County of CUMBERLAND,

AND

To the GENTLEMEN of the GRAND JURY,

Sir JAMES LOWTHER, Bart. Foreman.

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JOSEPH DACRE, Esq.
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JOHN HARTLEY, Esq.
THOMAS HARTLEY, Esq.
JOHN ORFEUR YATES, Esq.

THIS DISCOURSE

IS DEDICATED

WITH GREAT RESPECT

BY

THE AUTHOR.

Keep thee far from a falſe matter, and the innocent and Righteous, ſlay thou not, for I will not juſtify the wicked.

EXODUS, Chap. XXIII. Verſe vii.

IF men would conſider that the favour of their *Maker* is their *ſupreme good*, and his *diſpleaſure*, the moſt *dreadful thing* that can befal a *rational creature*, this would at all times make their paſſage through life more eaſy, would take away the uncomfortable part of theſe *ſolemnities*, and prevent thoſe irregularities which ye now meet to redreſs and recompence: and did the *fear of* GOD more univerſally prevail, there would be little *room* for the *fear of men*, when aſſembled to *ſettle controverſies*, or aſcertain the right of diſputed properties. 'Tis true, as even *honeſt* and good men, may be *miſtaken* in

points where *legal* titles are concerned, and as the *partiality* of no man is ſafely to be truſted in the determination of his *own pretenſions*, therefore the utmoſt influence of good principles, that *piety* can wiſh, or *human frailty* attain, would not *ſuperſede* this part of the *Magiſtrate*'s office: but it would be always neceſſary that wiſe and faithful men ſhould be appointed to compoſe miſunderſtandings, to explain the law, and to declare and confirm its deciſions in doubtful points; and it would certainly be no *diſpleaſing office*, to adjuſt the claims of thoſe who *deſire* no more, than to *know* their *right*, in order to *reſt content* with it.

It is, at firſt view, a pleaſing ſpeculation to reflect on the *beneficial tendency of religion*; to conſider how *happy* we ſhould make *each other*, If *all* would live in the *fear of* GOD; would make his *will* the rule of their *conſcience*, and their *conſcience* the *rule of every act of their life*. But how ſoon are we awakened from this delightful ſcene of contemplation? How ſoon does *experience* convince us, that theſe *ſalutary effects* of an univerſal *influence of religion* are not ſeen, are not indeed to be expected, in the preſent corrupt ſtate of mankind? How frequently are we reminded, that the *ſevereſt ſufferings* of our fellow-creatures are often not owing to *unforeſeen calamities*, but to *premeditated wickedneſs*, the *intended injuries* of their *fellow-creatures*, who were born to *aſſiſt* and *relieve* them? *Theſe ſolemnities* preſent us with many ſuch *ſorrowful remembrances*; and many others lie open to daily obſervation, where *legal remedies* may

may not *reach the caſe*, or where, for various reaſons, an application to *them* is not thought proper or deſirable.

It is of the more importance both to *prevent future* injuries, and to *redreſs* the *paſt*, that *juſtice* be done in thoſe caſes, where an *appeal* is made to *public deciſions*, that *falſe* accuſations may be *removed*, and *true* ones *confirmed*; and that every one's *juſt character*, as well as *property*, may be reſtored to him. And here *religion* comes in to our *ſuccour*, and may be inſtrumental in a good meaſure, towards *remedying* and *relieving* thoſe *violences*, which it was not able *totally to prevent*. A conſcientious regard to *truth* and *equity*, in thoſe who *on this occaſion* are to diſpenſe juſtice, cannot fail of having moſt happy effects; and they may conſider *their conſcience* as warmly applied to in the words of the text.

The *calls to duty* addreſſed to the *lower part* of mankind, however repeatedly enforced, are frequently too little regarded. Ignorance, inattention, diſtreſs of circumſtances, neglect of education, habitual impiety, and total attachment to the profits and pleaſures of the world, are too apt to defeat the warmeſt application that can be made to them; the *preſent occaſion* directs us to a *higher ſcene of life* where *admonition* may well hope to be more ſucceſsful.—Since *bad men* will make theſe ſolemnities *neceſſary*, it ſhould be the care of *virtuous men*, that they may be *effectual*; that juſtice may be duly adminiſtred in *acquitting* the *innocent* and *condemning*

demning the *guilty*; that no man may with impunity *go beyond, or defraud his brother in any matter*, and that no one who faithfully abhors the *crime*, may ſuffer falſely under the *imputation*.

But the *principle* on which his aſſiſtance is to be expected from thoſe who are now called on to judge of the conduct of others, to do real *credit* and ſervice to the public, and to render a righteous recompence to every private perſon by a faithful deciſion of each caſe, is ſtill the ſame by which *their previous conduct* ſhould have been regulated; and is, indeed, the only one equally adapted to all the different ſtations and circumſtances of life. None are *above* a dependence on their Maker, as none are *beneath* his notice; and therefore the Scriptures repreſent the favour or diſpleaſure of the Supreme Judge of all, as depending on the faithful diſcharge of judicial proceedings among men; *Keep thee far from a falſe matter, for I will not juſtify the wicked.* This admonition, if duly applied, would well anſwer the intent of *theſe preparatory exhortations*, and could ſcarce fail to leave ſuch impreſſions on all, as muſt excite their *love* to, and quicken their *zeal in the cauſe of juſtice*. The inſtances ſpecified in the text, direct us to ſome obſervations on the *rules* of it; and the *principle* on which it is urged, affords the ſtrongeſt poſſible *enforcement* of it.

The inſtances relate to two grand points of *diſtributive juſtice*, or rather to the violation of them.——*The puniſhment*

of

of evil doers and the praiſe of them that do well, being the very intent of this ſupplemental inſtitution, which is to *reviſe* former conduct, and *correct* the errors, and ſupply the defects of it; therefore they who would *juſtify wicked men*, reverſe the very end of this appointment; and not only defeat the benefit intended by it, but make it the occaſion of greater wrong; ſtrengthen the hands of proſperous wickedneſs, and *confirm*, nay *aggravate the diſtreſſes of oppreſſed innocence*. If the *degree* of guilt is to be eſtimated by the dreadful *conſequences* it produces, *that* would claim the *precedency* of all the injuries men can commit againſt each other; nay even the effects of *ſudden paſſion*, or *premeditated frauds* will be excluded on the compariſon.

With regard to the rule of our conduct on theſe occaſions, we would do well to conſider that every *deviation* from *truth* and *juſtice*, through whatever motive, is highly culpable; whoever *juſtifies* a *wicked man*, muſt appear guilty in the ſight of GOD, and fails in his duty to men. Whether his judgement be biaſs'd by *favour* or *fear*, by exceſs of compaſſion, or of ſeverity, in both caſes *truth* is injured, *authority* is abuſed, *equity* is perverted, and *public ſecurity* endangered, by weakening thoſe motives, which do, and which ſhould influence private conduct. The integrity of the diſcharge of all other *relative* and *ſocial* duties of life, will much depend upon the example of that integrity, with which judicial proceedings are determined; and if either *real offences* are *deſignedly overlooked*, or *groundleſs accuſa-*

tions unfairly countenanced, in each caſe, the progreſs of wickedneſs will be emboldened, and faithful adherence to unbefriended honeſty, diſcouraged.

In diſputes of a *civil* nature, if wicked men are juſtified in their unjuſt pretenſions; the juſt muſt ſuffer in their righteous ones. And in caſes of a *criminal kind*, though we are apt to be leſs affected, where the miſchief falls upon the *ſociety in general*, than where we ſee and know the *immediate* ſufferer, yet, in truth, the *welfare of the public* ought principally to be conſidered, and it is one end of theſe ſolemnities, to awaken our regard and attention to it. He who ſees offenders paſſed by, and eſcaping with impunity, if he does not act upon higher motives than the influence of human laws, (and it is alarming to think how many act upon no higher) will be encouraged to proceed in vicious courſes: and where any temptation lies in the way, will ſacrifice his own virtue, and the happineſs of others, to a preſent gratification, in hopes of eſcaping, even if detected, with the like impunity.

One would think indeed that little would be neceſſary to be urged on this ſubject; that a natural love of juſtice, a rational reſentment againſt the diſturbers of ſociety, and a regard to our own ſecurity, ſhould diſpoſe all to protect the righteous, and not *juſtify* the wicked. But, I fear, we ſhall often find it otherwiſe. Here, as in many other caſes, a principle *right* in itſelf, is wrong applied; and that *tenderneſs* which is implanted in our conſtitution, and which is always commendable

commendable when it is conſiſtent with the rules of *truth*, *equity* and *public utility*, is made to contradict them all; is exerted in favour of the undeſerving and injurious, and conſequently to the *prejudice* of thoſe, who have the beſt title to it. It is no uncommon ſcruple in the breaſts of ſome of the beſt men, when called upon by their country to take upon them the deciſion of ſome of the moſt important caſes, that too much *compaſſion* cannot be ſhewn, and that they ſhould be unwilling on any account to be concerned in taking away the life of a fellow-creature. And perhaps there may have been ſome, who have ſubmitted to the penalty, rather than be engaged in the deciſion of a queſtion which might end in the condemnation of a criminal. But it is an error to be reproved as of fatal conſequence to ſociety, and as inconſiſtent with that duty which every man owes to the community which gives protection to himſelf. If in this ſuppoſed caſe, the guilty be acquitted by the judgement of thoſe who are leſs conſcientious than himſelf, then is not the perſon, who thus deſerts his truſt, acceſſary to the *juſtification of the wicked*, and in proportion, anſwerable for the increaſe of diſtreſs, which may probably follow on ſuch encouragement given to ſucceſsful wickedneſs? Compaſſion, it muſt be allowed is very laudable; but it muſt be ſhewn to the *public* in the *firſt place*, then, to the injured part of ſociety, and laſtly, in a proper *manner* and *degree*, even to *thoſe* who by their own miſconduct, have brought ruin upon themſelves: but not in ſuch a manner as to confound all order, and leave the *inoffenſive* and *worthy* part of mankind

kind in the *power* and at the *mercy*, or rather let me ſay at the *mercileſs* conduct of the wicked.

It has often been obſerved on this occaſion that in doubtful caſes, it is ſafer and better, that the *guilty* ſhould *eſcape*, than the *innocent ſuffer*; and by all means let the obſervation have its full force and effect: but it is of no force towards ſetting aſide *ſufficient evidence*, or obviating *puniſhment* where crimes are *proved*. If the *law be doubtful*, it may be modeſty to diſtruſt ones own opinion; if a *fact* be *uncertain*, a love to juſtice will lead one to a more critical examination of it. Here can be no *juſtification of the wicked*, ſince *honeſt* men may *miſtake* in both caſes: whereas on the other hand, *if both theſe are clear*, if in a matter of *civil right* a *falſe* claim be founded on *fraud*, or ſupported by *violence*, no doubt can ariſe whether an *upright man* may *knowingly* be engaged in it, or may voluntarily become inſtrumental in ſupporting a *wicked cauſe*, and thereby in defeating the juſt claim of another. As to criminal caſes, a man may be *really*, who is not *legally* guilty, the office of his defender relates only to his *legal* guilt, and therefore he is not to be conſidered as juſtifying the wicked, while he is truly ſhewing that there are no determinate poſitive proofs to convict the ſuppoſed offender. The puniſhment of ſecret or unproved offences is the prerogative of Heaven, which will not fail finally to diſtinguiſh and ſeverely puniſh thoſe, who added *fraud* to their other guilt, and evaded all methods of human enquiry. But we, who cannot look into the heart, muſt proceed by *outward* evidence; and

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if an offender cannot in due courſe of law be proved as ſuch, there is neither ſin nor danger in arguing that he cannot, but he muſt be left to the juſt and dreadful judgement of his Maker.

It is allowed by the *ſevereſt* caſuiſts, by thoſe, who in queſtions concerning our obligations to *truth*, have, and I think rightly, taken the ſtrict and ſafe ſide, and have not permitted that a *falſehood* ſhould on any motive be permitted, with intent to deceive; that a perſon, notwithſtanding, who is conſcious of the crime laid to his charge, may yet fairly plead *not guilty* to the legal queſtion propoſed to him, if he thinks it cannot be proved upon him: the intent of that queſtion not being to oblige him to accuſe himſelf, but only to enquire whether he will acknowledge his guilt to be ſo flagrant as to be incapable of defence, and thereby ſave the court the trouble of the enquiry, and ſubmit to the mercy of it; or whether he is willing to abide by the *juſtice* of it, and to put himſelf upon the judgement of his country. There is no *intention* to *deceive* in this caſe, not ſo much as a *literal falſehood* in ſaying that he is not guilty, that is, not *legally* guilty till proved ſo: for the *law*, which in this *caſe* has put the very words in his mouth, not only *permits* but *encourages* all in theſe circumſtances to make uſe of *them*, and will not admit of any other.

The ſame reaſoning may undoubtedly be extended to thoſe who plead in behalf of ſuch as they may perhaps in their

private opinion *believe to be guilty*, but ſuch as having by artful wickedneſs, tranſacted their iniquity in ſuch a manner as to eſcape public detection, are now the ſubject only of *legal* inquiry, and in this light may perhaps be defenſible. Here likewiſe is *no intention to deceive.* The thing aſſerted is ſuppoſed to be true, that the proofs offered in juſtification of the charge, are not ſufficient to convict the perſon accuſed: And if this be true, the *defender* certainly ſtands juſtified, though his own ſentiments upon a different queſtion concerning the *actual* guilt, may be different. Thoſe circumſtances which in the equitable and merciful conſtruction of the law, may be eſteemed *doubtful*, may yet be *convincing* to a private perſon, as in the caſe of ſingle unexceptionable teſtimony, where *two* may be required to a legal conviction; but whilſt the *law*, which is the *ſecurity of us all*, is faithfully adhered to, there can be no fault or unfaithfulneſs in the *defender* of any cauſe. The *Jurors* themſelves are by oath obliged to lay aſide all prepoſſeſions, all private opinions, founded upon any other evidence than is now offered to them, to attend ſolely to the proofs produced in open court, and to form their judgement and deciſion from them, whatever may be added to, or omitted of what has formerly come to their knowledge. And what is thus in ſolemn form required of *them*, is undoubtedly right and juſtifiable in others.

But then after all theſe conceſſions, the ſin of *juſtifying the wicked*, may be contracted, tho' not by ſhewing that the law does not allow of the proofs offered, yet by *defeating* ſuch as the law

law would allow of. Every attempt to *prevent* ſufficient evidence, or to *pervert* it, every inquiry calculated not to *open* the truth, but to *perplex* it, and to confound a fair well-meaning witneſs, are arts inconſiſtant with conſcience; for the welfare of every worthy member of ſociety, is intereſted in bringing the wilful diſturbers of it to public ſhame and puniſhment. Again, if *juſt men* are condemned, if innocence itſelf cannot be a guard againſt malicious accuſers, falſe witneſſes, or corrupt jurors, the intentof the inſtitution of magiſtracy will be reverſed; and *Judges*, the moſt upright in themſelves, of the moſt diſtinguiſhed integrity and abilities, (ſuch as, by the confeſſion of all, we of this nation are bleſſed with) may againſt their *own* deſign, as well as the deſign of their *Office*, be made a *terror even to good works*. Not only a grievous injury is done to particular perſons, but the cauſe of virtue is injured, and deprived of one of its beſt temporal ſupports; it will loſe that *recommendation* which in the preſent ſtate of things is of ſo much weight, that it is the *neceſſary means* of preſervation and eſteem; the only ſecurity of man's life, property, and reputation. The voice of *reaſon* as well as *revelation* will teach us that the following is the law and determination of GOD himſelf, *keep thee far from a falſe matter, and the innocent and righteous ſlay thou not, for I will not juſtify the wicked.* If the moral attributes of the Deity are demonſtrable by the light of nature, then the ſame light may convince us, that they who act contrary to thoſe attributes, cannot partake of his favour or of his preſence. Of all his moral excellencies, none ſhines with clearer evidence than that

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of his juſtice. The *ſcripture*, which is *reaſon improved* and *exalted*, lays great ſtreſs on the certainty of this *perfection in* GOD, and the neceſſity of propoſing it as a pattern imitable by man. The texts are too numerous to be recited at preſent; and if this be the known character of our Maker, we cannot but know the character he requires of us. It is not good, ſays *Solomon, to have reſpect of perſons in judgement. He that ſaith to the wicked, thou art righteous, him ſhall the people curſe, nations ſhall abhor him.* The voice of the people is, in this caſe, the voice of GOD; for, the *ſecurity* and *welfare of ſociety* was certainly the *intent* of the Author of it.———

But it may well ſeem unneceſſary to argue further their *guilt* or *danger*, who in this caſe are forced to condemn themſelves, and by the nature of their *oath*, declare themſelves unworthy of divine favour, if they *knowingly* and *wilfully* offend againſt *truth* and *juſtice*. No ſtronger tye could poſſibly have been laid upon rational accountable creatures, and no more affecting form could poſſibly have been deviſed to awaken their *conſciences*, and alarm their *fears*, than this of putting in their own mouths, their ſentence of condemnation, and of obliging them to renounce the divine aſſiſtance in expreſs terms; and in conſequence to call upon GOD to avenge their wickedneſs, if he ſees them guilty of it. To this caſe of perjured iniquity, ſeems particularly to relate that paſſage in the Book of Lamentations—"To turn aſide "the right of a man before the face of the Moſt High, to "ſubvert a man in his cauſe, the LORD approveth not."

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He approveth not, that is, he diſapproveth it, in the *ſtrongeſt manner*. This is a figure of ſpeech, expreſſing the higheſt indignation, under the loweſt form of words: like another ſentence relating to a *perjured* perſon, *The* LORD *will not hold him guiltleſs*, that is, he will *particularly charge him with guilt; ſuch a one of all others*, ſhall the *leaſt* go unpuniſhed.

Can believers hear this, and yet act like infidels? acknowledge that the "wrath of GOD is revealed from Heaven a-"gainſt all unrighteouſneſs of men," and yet at the ſame time of making this ſolemn appeal to him, dare to violate his *laws*, and defy his *vengeance*, as if they thought it no *fearful thing to fall into the hands*, and to provoke the indignation of the *Living GOD?*——We have ſufficient *calls* to the diſcharge of our duty, and to avoid and deteſt iniquity from *inferior* conſiderations: from the neceſſity of *juſtice* to the peace and ſatisfaction of our own minds; from the uneaſineſs of continual apprehenſions of being *detected;* from the terror of *human laws*, when *detection* enſues; from the juſt *abhorrence* of all *good men*, even where legal penalties are in any ways evaded; from the *taſteleſſneſs* of all *guilty acquiſitions*, and the total want of any *refuge* or *remedy*, when *calamities* happen.—But all theſe are motives, which, however weighty, may be more eaſily balanced, by ſome powerful ſecular temptation: and they are all ſunk in that important reflection, which no allurement can exceed, "That *ſuch* ſinners the LORD will not hold guiltleſs."

To this denunciation of vengeance, we may properly apply that which was ſpoken by the Prophet *Ezekiel* with reſpect to a temporal viſitation; "Now will I ſhortly pour "out my fury upon thee; and accompliſh mine anger upon "thee; and I will judge thee according to thy ways, and ye "ſhall know that I am the LORD that ſmiteth."

The *equity* and *equality* of the *retribution* will ſpeak the *author* of it; for this will correct the errors, and ſupply the defects of all former Judicatures: "The righteous ſhall "then ſhine as the ſun in the kingdom of their Father: "whilſt he that doth wrong ſhall receive for the wrong "that he hath done, and there is no reſpect of perſons."

Under a warm ſenſe of this awful expectation, let us conclude with a ſuitable exhortation in the Levitical Law:

"Ye ſhall do no unrighteouſneſs in judgment, thou ſhalt "not reſpect the perſon of the poor, nor honour the perſon "of the mighty, but in righteouſneſs ſhalt thou judge thy "neighbour."

7 JU 66

Now to GOD *the Father, &c.*

F I N I S.